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9 JOSEPH PANGELINAN

**FILED**  
DISTRICT COURT OF GUAM

JUN 27 2008 

**JEANNE G. QUINATA**  
Clerk of Court

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF GUAM**

9 **UNITED STATES OF AMERICA,**

**CRIMINAL CASE NO. CR08-00004**

10 **Plaintiffs,**

11 **vs.**

**DEFENDANT JOSEPH  
PANGELINAN'S RULE 29 MOTION  
FOR JUDGMENT OF ACQUITTAL;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; CERTIFICATE OF  
SERVICE**

12 **JOSEPH PANGELINAN, et al.,**

13 **Defendants.**  
14 \_\_\_\_\_ /

15 COMES NOW the Defendant **JOSEPH PANGELINAN** ("PANGELINAN"),  
16 through counsel MAHER • YANZA • FLYNN • TIMBLIN, LLP, by Louie J. Yanza, and  
17 hereby moves this Honorable Court for a Judgment of Acquittal on the grounds that  
18 there is insufficient evidence presented to sustain a conviction in this matter and the  
19 Government has not been able to prove the substantive fraud counts. Counsel for  
20 Defendant PANGELINAN states that this Motion for Judgment of Acquittal is joined by  
21 all other Defendants herein, by and through their respective counsel of record.

22 This motion is made pursuant to Rule 29 of the Federal Rules of Criminal  
23 Procedure and is based on the accompanying Memorandum of Points and  
24  
25

1 Authorities, the record of the proceedings and papers on file herein, together with any  
2 and all arguments to be adduced at the hearing of the within motion.

3 Dated this 27<sup>th</sup> day of June, 2008.

4 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
5 Attorneys for Defendant  
6 **JOSEPH PANGELINAN**

7 By:

8   
9 **LOUIE J. YANZA**

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **ARGUMENT**

12 **1. THERE IS INSUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION**  
13 **ON COUNTS I THROUGH VI OF THE INDICTMENT.**

14 Rule 29 permits a defendant to request a motion for a judgment of acquittal:

15 **"Before Submission to the Jury.** After the government  
16 closes its evidence or after the close of all the evidence, the  
17 court on the defendant's motion must enter a judgment of  
18 acquittal of any offense for which the evidence is insufficient to  
19 sustain a conviction. The court may on its own consider  
20 whether the evidence is insufficient to sustain a conviction. If  
21 the court denies a motion for a judgment of acquittal at the  
22 close of the government's evidence, the defendant may offer  
23 evidence without having reserved the right to do."

24 Fed.Crim.Pro. Rule 29.

25 The Court considers whether, "after viewing the evidence in a light most  
favorable to the prosecution, any rational juror or trier of fact could have found the  
essential elements of the crime beyond a reasonable doubt." United States v.  
Bautista-Avilla, 6 F.3d 1360, 1362 (9<sup>th</sup> Cir. 1993).

In Count I through VI of the Indictment, the Government has alleged that a  
conspiracy existed between Lee, the indicted Examiners and others. The Government  
must prove "the defendant's knowledge and voluntary participation in the agreement,

1 and overt act in furtherance of it." United States v. Ruiz, 105 F.3d 1492, 1499 (1<sup>st</sup> Cir.  
2 1997). Further, the Government must prove the requisite *mens rea* for this type of  
3 offense. 18 U.S.C. §1029(a)(1). The requisite state of mind for a violation of 18 U.S.C.  
4 §1028(a)(1) is "knowingly", which applies to the additional elements of "without lawful  
5 authority" and, "produces an identification document." The object of the alleged  
6 conspiracy is the production of identification documents knowing that one is without  
7 lawful authority to do so.

8 A rational juror can infer from circumstantial evidence that a defendant knew of  
9 a conspiracy. United States v. Baxter, 492 F.2d. 150, 158-159 (9<sup>th</sup> Cir. 1973). But in  
10 factual inferences, one cannot confuse:  
11

12 [s]imilar purposes of numerous separate adventures of like  
13 character with a single purpose of one overall scheme. While  
14 the individual defendants may have entered a **conspiracy** with  
15 some of the other **indicted co-conspirators**, the Government  
16 had the burden of connecting each defendant directly or  
17 circumstantially with the larger over-all scheme.

18 Id. (citation omitted).

19 Here, the Government has not proven a conspiracy between the Examiners,  
20 Lee and the licensees. The Government has not proven that the Examiners even  
21 knew of the existence of any licensee conspiracy. And, there is no evidence that the  
22 Examiners knew that Lee was part of a larger conspiracy. There is no evidence that  
23 permits the inference that the Examiners knew that the licensees Lee brought over  
24 were Lee's confederates. All that was proven was a conspiracy between Lee and the  
25 licensees to obtain a driver's license. Moreover, the Government has not proven a  
conspiracy between Lee and the Examiners. There has been no testimony presented

1 by FBI Agents, Blas, Salas, San Agustin, Prince, or the licensees, establishing a  
2 conspiracy between the Examiners and Lee.

3 The object of the conspiracy has not been met. The only evidence the  
4 Government has brought forth is that Lee has enriched herself by receiving money  
5 from some licensees. However, there has been no evidence the Examiners received a  
6 monetary reward or compensation from Lee. Both Agents Ferguson and Klocke  
7 testified to this fact.

8 The manner and means of the conspiracy has not even been met. The  
9 Government alleges that: "... every examiner knew that upon entry of this information,  
10 the MVD computer would create a file under the applicant's name, using the SSN or  
11 TIN on the application." Indictment, p. 2. The Government also alleges that: "The  
12 examiner would enter the information on the alien's application into the MVD computer,  
13 and schedule a date for a written examination." Indictment, p. 5. There is no evidence  
14 that an Examiner, who accepted the application, was in fact the one who had entered  
15 the application into the system. More importantly, the evidence shows that a person  
16 using a User I.D. to input information into the MVD computer, may not have been the  
17 person who was actually assigned the User I.D. The Government fails to establish that  
18 the Examiner accepting the application was the actual Examiner imputing the  
19 application into the MVD computer system. Agent Klocke has admitted this fact.

21 **2. THE GOVERNMENT HAS NOT BEEN ABLE TO PROVE THE**  
22 **SUBSTANTIVE FRAUD COUNTS.**

23 The Government alleges in the substantive fraud counts contained in the  
24 Indictment that an Examiner and Lee, "did knowingly and without lawful authority  
25

1 produce ... identification documents, authentication features and false identification  
2 documents" to a Guam driver's license. Indictment.

3 Once again, the Government has failed to prove, beyond a reasonable doubt,  
4 that the documents that were submitted to the individual Examiners were fraudulent.  
5 There is no evidence to establish that the examiners knew that identification  
6 documents or that Social Security Numbers or Taxpayer Identification Numbers that  
7 were given with the license applications were in fact fraudulent.

8 Also, on paragraph 71 of the Indictment, the Government alleged that the  
9 Defendant produced "an illegal duplicate driver's license in the name of Mark Park,  
10 number 1228108937. . . ". The Government has not shown how Kwang Ho Park now  
11 known as Mike Park was able to obtain a duplicate driver's license. Testimony and  
12 evidence shows that Mike Park was able to legally procure a driver's license.  
13

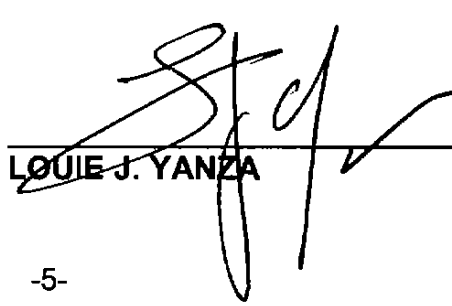
### 14 CONCLUSION

15 For all of the above-enumerated reasons, there is insufficient evidence to  
16 sustain a conviction. The Government has not proven, beyond a reasonable doubt, or  
17 submitted any evidence substantiating that a conspiracy existed or that the Examiners  
18 knew that accepting the application was fraudulent.  
19

20 Respectfully submitted this 27<sup>th</sup> day of June, 2008.

21 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
22 Attorneys for Defendant  
23 **JOSEPH PANGELINAN**

24 By:

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**LOUIE J. YANZA**

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12 Dated this 27<sup>th</sup> day of June, 2008.

13 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
14 Attorneys for Defendant  
15 **JOSEPH PANGELINAN**

16 By:

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